

The Effectiveness of Restorative Justice Implementation in Resolving Criminal Cases Outside the Court (Case Study of Pekalongan Police Resort)

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Abstract. *This study aims to determine and provide solutions to the problem of realizing the supremacy of law through restorative justice in resolving criminal cases outside the court; implementation of its principles in law enforcement practices; and implementation of restorative justice policies in resolving criminal cases outside the court by the Pekalongan Police. In terms of its effectiveness, restorative justice at the Pekalongan Police Criminal Investigation Unit can be effective from a legal perspective due to the existence of Perpol No. 8 of 2021 which is the normative basis for the police to exercise discretion. The factors that encourage the investigation team to use the Restorative Justice Principle in the Pekalongan Police environment are the substance of the laws and regulations; instructions from the leadership; investigators as law enforcers; and the situation and conditions in the investigation process. External factors include support from the community. Second, the application of restorative justice changes the pattern of its resolution to the needs of victims and improving public order compared to criminalizing someone. Third, the legal consequences that arise are that the rule of law is no longer the main choice in resolving cases in law enforcement efforts, this is because the rule of law does not fully accommodate efforts to resolve cases. The results of the study show that the implementation of the restorative justice principle in criminal cases at the Pekalongan Police has been carried out in accordance with the procedures based on the Indonesian Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Obstacles and Efforts of the Pekalongan Police in implementing restorative justice in criminal cases usually come from the community who do not understand the existence of case resolution with the Restorative Justice principle.*

Keywords: *Criminal; Justice; Police.*

1. Introduction

The Republic of Indonesia National Police (Polri) as part of the Integrated Criminal Justice System has a very important role in enforcing criminal law. In Law No. 2 of 2002 concerning the Police, Article 2 states that the function of the

police is to carry out one of the functions of state government in the task of protecting, assisting and serving the community and enforcing the law. Article 14 paragraph (1) letter g of Law No. 2 of 2002 mandates that the Police have the authority to conduct investigations into criminal acts that are previously preceded by investigative actions by investigators.¹

Law enforcement that is carried out is of course law enforcement that must be in accordance with laws and regulations (KUHAP), also referring to the priority program of the Chief of Police which carries the concept of Transformation towards a Predictive, Responsible and Transparency Police with Justice (PRESISI). In its explanation, Predictive is interpreted as Predictive policing which prioritizes the ability of the Police to predict situations and conditions that become issues and problems as well as potential disturbances to public order and security. Responsibility is interpreted as a sense of responsibility that is manifested in statements of attitude, behavior and responsiveness in carrying out tasks, which as a whole are aimed at guaranteeing the interests and expectations of the community in creating security and order. While Transparency with Justice is interpreted as the Realization of principles, ways of thinking and systems that are open, accountable, humanistic and easy to supervise.

The transformation towards a Precision Police covers 4 areas, 16 priority programs, 51 activities and 117 action plans. In the operational field, one of the Chief of Police's priority programs is the Law Enforcement Performance Improvement Program. In this case, one of the Chief of Police's concerns is the existence of a law enforcement process that fulfills the community's sense of justice. This can be realized by prioritizing progressive law in resolving cases through restorative justice which not only looks at the aspect of legal certainty, but also at the benefits and justice.

Crime prevention policies have a very broad scope and can be implemented through preventive efforts and repressive efforts. Thus, crime prevention efforts can be carried out in several ways, such as legal counseling and legal information (preventive), prevention without the application of criminal law and with criminal proceedings or through the application of criminal law (repressive).

The concept of restorative justice offers a recovery process that involves the perpetrator and victim directly in resolving the problem. Restorative justice or Restorative Justice contains the following meaning: "a restoration of relationships and redemption of mistakes that the perpetrator of a crime (his family) wants to do to the victim of the crime (his family) (peace efforts) outside the court with the intention and purpose that legal problems arising from the occurrence of the crime can be resolved properly by reaching an agreement and consensus between the parties".

¹Pudi Rahardi, 2007, *Police Law (Professionalism and Police Reform)*, Laksbang Mediatama, Surabaya, , 1st ed., p. 27.

The implementation of restorative justice by the Pekalongan Police is to realize justice because the members have been equipped with knowledge about the nature of how someone who becomes a victim in a criminal case so that the spirit to implement restorative justice is realized to restore the victim's rights first. This is as according to Christie, where there are 6 (six) attributes to find out the identity or self-identity of a victim of a particular crime, including:²

“The victims are weak in relation to the offender. The victim is, if not acting virtuous, then at least going about their legitimate, ordinary everyday business. The victim is blameless for what happened. The victim is unrelated to and does not know the stranger who has committed the offence. The offender is unambiguously big and bad. The victim has the right combination of power, influence or sympathy to successfully elicit victim status without threatening (and thus risking opposition from) strong countervailing vested interests.”

Based on the explanation above, it can be understood that the victim should actually receive sympathy and justice, this can be felt if the settlement of criminal cases is carried out through restorative justice. The main principle of resolving criminal acts through a restorative approach is that the settlement must be able to penetrate the hearts and minds of the parties involved in the settlement process so that they can understand the intent and purpose of the recovery and the form of sanctions. The sanctions applied are restorative or preventive sanctions. At the Pekalongan Police, a peace process is often carried out between the reporter and the reported. After the peace process is successful, the reporter then submits a letter of withdrawal of the complaint. Then, on the basis of the peace and withdrawal of the complaint report, the Pekalongan Police investigator will follow up by holding a case title to stop the investigation of the case.

The Criminal Investigation Unit at the National Police level, in this case the Pekalongan Police, can influence the success of the National Police institution in carrying out its duties. This is because, in the implementation of National Police operations, Criminal Investigation plays a role as the final function of the National Police strategy in law enforcement. In the operational structure of the National Police, Criminal Investigation plays a role as the spearhead of operations. The main function of the National Police that directly touches its targets is the Criminal Investigation function, namely through investigations and inquiries that have stages of investigation, prosecution, examination, settlement, and submission of case files.

Investigators must not discriminate between people in the examination process, both suspects and victims, investigators must carry out their duties as regulated in laws and regulations by upholding the principle of equality before the law, and

²Dignan, James Understanding Victims and Restorative Justice, Berkshire : Open University Press McGraw-Hill Education, 2005, p. 17.

continue to uphold human rights. The function of criminal investigation must at least work professionally to achieve the rule of law and a sense of justice.

The ultimate goal of this restorative concept is to hopefully reduce the number of prisoners in prison; eliminate stigma or labels and return criminals to normal humans; perpetrators of crimes can realize their mistakes, so they do not repeat their actions and reduce the workload of the police, prosecutors, correctional institutions, courts, and community institutions; save state finances do not cause resentment because the perpetrators have been forgiven by the victims, victims immediately receive compensation, empower the community.

However, the reality in the field of restorative justice implementation, especially in the Pekalongan Police, sometimes does not run smoothly. There are many obstacles both from external parties and from within the Pekalongan Police itself. So based on this, the author will raise the theme of the Effectiveness of Restorative Justice Implementation in Resolving Criminal Cases Outside the Court (Study of the Pekalongan Police Case).

2. Research methods

The approach method used in this study is a sociological legal approach. The research specification used in this study is analytical descriptive because it aims to provide a comprehensive and in-depth description of a condition or symptom being studied and to analyze the effectiveness of the application of restorative justice in resolving criminal cases outside the courts of the Pekalongan Police Resort Case Study.

The data used in this study are primary data and secondary data. By using the problem approach above, data collection in this study was carried out by means of literature study and interviews. Primary data and secondary data collected in the study will be analyzed qualitatively to achieve clarity of the problems to be discussed. With the qualitative analysis method, this study will produce analytical descriptive data, namely what is stated by respondents in writing or verbally and also real behavior that is researched and studied as something whole.

3. Results and Discussion

3.1. Implementation of Restorative Justice in resolving cases outside the courts

The implementation of the concept of restorative justice in Indonesia has also been implemented through the Indonesian National Police as the implementer in terms of criminal law enforcement. This is as stated in the Circular of the Chief of the Indonesian National Police Number SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases (SE Kapolri Number 8 of 2018) and Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation (Perkapolri Number 6 of 2019). As stated in SE Kapolri Number 8 of 2018 letter c that the principle of restorative justice is a development of the law enforcement process

in the criminal law settlement system. The purpose of restorative justice is further stated in letter d of SE Kapolri Number 8 of 2018, namely the presence of the principle of restorative justice is to fulfill the sense of justice of all parties including fulfilling the legal needs of the community. This, as the function of the Indonesian National Police, is to be able to accommodate the values of justice that exist in society while also being able to provide legal certainty in society.

In letter f of SE Kapolri Number 8 of 2018 it is also emphasized that the settlement of criminal cases through the principle of restorative justice is not just a settlement of criminal cases by terminating the case and then resolving it peacefully. Rather, the settlement of criminal cases by applying the principle of restorative justice is broader than just a method of terminating the case and a peaceful process between the parties, namely the principle of restorative justice is a form of settlement that emphasizes the fulfillment of the sense of justice of all parties involved in the criminal case that occurred through the direct participation of victims, perpetrators of criminal acts, and the local community. Meanwhile, the police, who are generally investigators and/or investigators, in the principle of restorative justice also play a role as mediators in resolving criminal cases that occur.

In the Regulation of the Chief of Police Number 6 of 2019, it is also reaffirmed in Article 1 point 1 that the Indonesian National Police has an essential role in maintaining public security and order, enforcing the law and providing protection, shelter, and services to the community. Thus, in this case it can be observed that the role of the police in society is very important, both as a protector for the community, maintaining security and order, realizing legal certainty, and presenting a sense of justice for the community in order to create a harmonious social order between one another. Then, in Article 1 point 27 of the Regulation of the Chief of Police Number 6 of 2019, it is explained again regarding restorative justice that the resolution of criminal cases through restorative justice is a resolution that involves perpetrators of criminal acts, victims and related parties, with the main goal being to realize justice for all parties.

The formal requirements for resolving criminal acts through the application of the principle of restorative justice are also explained in Article 12 of the Chief of Police Regulation Number 6 of 2019 that:

1. There is a Letter of Request for Peace from both parties, namely the reporter and the reported party.
2. The existence of a Peace Letter and Settlement of Disputes between the disputing parties.
3. The existence of Additional Examination Reports of the parties involved in the case after the criminal case has been resolved through the principle of restorative justice (*restorative justice*).

4. There is a recommendation from a special case title that approves the resolution of criminal cases through restorative justice (*restorative justice*).
5. The perpetrator of the crime truly carries out all forms of responsibility for the crime that has been committed voluntarily.
6. Criminal acts that can be resolved through restorative justice (*restorative justice*) is a crime that does not cause human casualties.

Meanwhile, regarding the complete mechanism for implementing restorative justice in resolving criminal cases, it is contained in the SE Kapolri Number 8 of 2018. The mechanisms for implementing restorative justice include:

1. After receiving a peace request from both parties (the complainant and the accused) signed on a stamp, the police will ensure that the formal requirements for resolving the criminal case through restorative justice have been met.
2. If the formal requirements have been met, the peace request will be submitted to the investigator's superior (Kabareskrim or Kapolres or Kapolda) to obtain approval.
3. After the peace request is approved by the investigator's superior (Kabareskrim or Kapolres or Kapolda) then a time will be set for the signing of the peace statement, as well as the participation of all parties involved.
4. A special case title was held with the reporter, the reported party, and representatives of community leaders appointed by the investigator.
5. Issuance of a Letter of Order to Terminate Investigation or Inquiry and a Letter of Decision to Terminate Investigation or Inquiry with reasons for resolving criminal cases through restorative justice.
6. Then, there is a recording in the new register book B-19 as a settlement of criminal cases through restorative justice (*restorative justice*).

The implementation of restorative justice at the Pekalongan Police adheres to the rules that have been explained. In the current practice of criminal law enforcement, especially in the Police, in order to accommodate the mechanism for implementing restorative justice, under the leadership of the Chief of Police Listyo Sigit Prabowo, Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice was born. The handling based on Restorative Justice is exempted for disturbing crimes, acts of terrorism, state security, corruption, repeat crimes and crimes against people's lives. The presence of Perpol No. 8 of 2021 concerning Restorative Justice provides space for members of the Police in the Criminal Investigation Unit to resolve cases faster and provide normative guidelines in acting to resolve criminal cases using the restorative justice method. In terms of handling cases as determined by Perpol No. 8 of 2021, it can be seen that when there is a complaint report related to cybercrime, that is when restorative justice is attempted. However, in its

implementation, restorative justice is carried out in all initial stages of criminal proceedings, starting from investigation to prosecution.

In practice, for handling cases that are not related to terrorism, state security, corruption and crimes against people's lives, not repeat crimes and crimes that are not disturbing, the Pekalongan Police will also try as much as possible to divert the formal trial process with a mediation process with the principle of restorative justice. It is known that in the Pekalongan Police, there were 35 cases of crimes committed using the restorative justice mechanism in 2023, including 6 cases of minor assault; 5 cases of ganging up; 18 cases of theft; 5 cases of fraud; 1 case of domestic violence.

The implementation of restorative justice by the Pekalongan Police is to realize justice because the members have been equipped with knowledge about the nature of how someone who becomes a victim in a criminal case so that the spirit to implement restorative justice is realized to restore the victim's rights first. In the Pekalongan Police, it is often implemented with a peace process between the reporter and the reported. After the peace process is successfully carried out, the reporter then submits a letter of withdrawal of the complaint. Then on the basis of the peace and withdrawal of the complaint report, the Pekalongan Police investigators will follow up by conducting a case title to stop the investigation of the case.

Investigators must not discriminate between people in the examination process, be it suspects or victims, investigators must carry out their duties as stipulated in laws and regulations by upholding the principle of equality before the law, and continue to uphold Human Rights. The function of the criminal investigation must at least work professionally to achieve the upholding of law and a sense of justice. The ultimate goal of this restorative concept is to reduce the number of prisoners in prison; eliminate stigma or labels and return perpetrators of crimes to normal humans; perpetrators of crimes can realize their mistakes, so that they do not repeat their actions and reduce the workload of the police, prosecutors, detention centers, courts, and community institutions; save state finances, do not cause resentment because the perpetrator has been forgiven by the victim, the victim quickly gets compensation; empower the community.

Pekalongan Police in terms of the use of restorative justice programs are implemented in the following manner:³

- a. Restorative justice programs can be used at any stage of the criminal justice system;
- b. The restorative justice process is only used when there is sufficient evidence to prosecute the perpetrator of the crime and is accompanied by the freedom and voluntariness of the victim. This includes the freedom of the perpetrator and victim to withdraw from the agreement at any time during

³Interview with the Head of Criminal Investigation Unit of Pekalongan Police

the process. The agreement must also be reached voluntarily and contain reasonable and proportionate obligations;

- c. The agreement is based on basic facts relating to the case in question, and the perpetrator's participation cannot be used as evidence of an admission of guilt in subsequent legal proceedings;
- d. Disparities resulting from imbalances in both power and cultural differences must be taken into account when implementing the restorative justice process;
- e. The safety of the parties must be taken into account in the restorative justice process;
- f. If restorative processes are not appropriate or possible, the case should be returned to the criminal justice system official, and a decision should be made to process the case without delay. In this case, the criminal justice official should strive to encourage the perpetrator to take responsibility for dealing with the victim and the community that has been harmed and continue to support the reintegration of the victim and the perpetrator into the community.

The implementation of the restorative justice mechanism at the Pekalongan Police is carried out with guidelines and standards that must be clearly formulated through "responsive regulation" in the form of legislative products, which regulate the use of the restorative justice process. The principles contained in the guidelines are:⁴

- a. The conditions of the case in question are directed to enter the restorative justice process;
- b. Handling of cases after entering the restorative justice process;
- c. Qualifications, training and assessment of facilitators;
- d. Administration of restorative justice programs;
- e. Competency standards and "*rules of conduct*" which controls the implementation of restorative justice.

Basic justice procedures that guarantee fairness and honesty of perpetrators and victims in the implementation of restorative justice at the Pekalongan Police, namely:⁵

- a. Under national law victims and perpetrators must have the right to consult with legal counsel in connection with the restorative justice process and, if necessary, to translate and interpret. Minors have the right to be assisted by a parent or guardian;

⁴Ibid

⁵Ibid

- b. Before agreeing to participate in a restorative justice process, the parties must be given full information about their rights, the nature of the process and the possible consequences of their decision;
- c. Neither victims nor perpetrators may be forced or persuaded by dishonest means to participate in the restorative justice process or to accept its outcomes.

Another thing that must be considered according to the Head of Criminal Investigation Unit of Pekalongan Police is:⁶

- a. The confidentiality of the process must be maintained, except with the consent of the parties must be open.
- b. The results of agreements that arise in the restorative justice process, if necessary, need to be monitored by judicial institutions, or combined in a judicial decision with the same status as a judicial decision and must preclude prosecution in the same case;
- c. If no agreement is reached between the parties, the case must be returned to the criminal justice process and processed without delay. Failure to reach an agreement itself does not will be used for further judicial proceedings;
- d. Failure to implement an agreement made in the framework of the restorative justice process must be returned in the restorative process or criminal justice and the process must be carried out immediately without delay. Failure to implement an agreement that is different from the court's decision cannot be used as a justification for imposing a heavier sentence in the subsequent judicial process;
- e. The facilitator must carry out his/her duties impartially, with respect for the dignity of the parties. In this capacity, the facilitator must ensure that the parties act with respect for each other. each other and enable the parties to find a relevant solution between them;
- f. The facilitator must have a good understanding of local culture and community and if necessary, obtain prior training before carrying out their duties as facilitators;
- g. The state must formulate national strategies and policies to develop restorative justice and promote a culture conducive to the use of restorative justice among law enforcers, social institutions and courts as well as local communities.
- h. Consultation should be undertaken between criminal justice agencies and restorative justice process administrators to develop a shared understanding and strengthen the effectiveness of restorative justice and its outcomes, to increase the extent to which restorative programs are used, and to explore

⁶ibid

possible ways in which restorative justice approaches can be incorporated into criminal justice practice;

- i. The state together with civil society must develop research to evaluate restorative justice programs by assessing the level of use of the results, support as a complement or alternative to the criminal justice process and creating positive results for all parties. The restorative justice process is very much needed to implement concrete changes. The state must periodically improve and modify required from its programs. The results of research and evaluation should be used as guidelines for further policies and program development;
- j. It is emphasized once again that all the basic principles above are not will affect the rights of the perpetrator or victim as regulated in national law or international law.

3.2. Weaknesses in the application of Restorative Justice in resolving criminal cases outside the courts

Based on the practice of criminal law enforcement, we often hear the term Restorative Justice, or Restorasi Justice which in Indonesian translation is called Restorative Justice. Restorative Justice or Restorative Justice is the restoration of relationships and redemption of mistakes that the perpetrator of a crime wants to do to the victim of the crime with peace efforts outside the court for the purpose and objective that legal problems arising from the occurrence of the crime can be resolved properly by reaching an agreement and agreement between the parties. "The justice that has been going on in the criminal justice system in Indonesia is retributive justice. While what is expected is restorative justice, namely this justice is a process where all parties involved in a particular crime together solve the problem of how to deal with its consequences in the future.

The sense of justice expected from law enforcement has not been enjoyed by the people in this country. Moreover, as is known, the criminal justice system in Indonesia does not regulate much about victims. Thus, sometimes the existence of victims tends to be ignored or "forgotten", considering that this system focuses more on perpetrators of crimes. Protection of victims' rights is essentially part of the protection of human rights. Victims need protection to ensure that their rights are fulfilled. Because so far in the criminal justice system in Indonesia, the rights of victims are less protected than the rights of suspects. In this problem, Restorative Justice can be a solution to this situation or condition.

Another weakness in the implementation of Restorative Justice is that not all people are aware of the concept of Restorative Justice as a substitute for the general criminal system. This then causes in the investigation process, often one party cannot be present to carry out the investigation process or cannot attend the diversion process at the investigation level. This often occurs in the handling and use of Restorative Justice in handling the juvenile justice system where the

victim's family often refuses to be present to carry out restorative efforts and insists on carrying out the investigation process until completion. This obstacle which then becomes one of the weaknesses of the implementation of Restorative Justice is still not perfectly carried out and implemented in Indonesia, public awareness and also the role of law enforcement in supporting the implementation of Restorative Justice is still minimal and has not been carried out optimally.

In the investigation of criminal acts at the police level, the existence of "out-of-court settlements" often raises suspicions about the authority of police investigators in resolving cases. The existence of an agreement between the victim/reporter and the perpetrator/reported party in the police investigation process is often considered an abuse of authority by the law enforcers. The good intentions of police investigators who handle cases with "out-of-court settlements", known in the police investigation process as SP3 (Investigation Termination Order) are often considered as a "commodity". Cynical sarcasm is often uttered, how much money is requested by the investigator, or how much money is given by the disputing or conflicting parties (reporter and reported party).⁷

For example, to avoid this stigma, the Indonesian National Police has created guidelines in carrying out duties as a National Police investigator through the Chief of Police Telegram dated November 11, 2006 with Number Pol: TR/1124/XI/2006, which is used as the basic framework for National Police investigators in implementing restorative justice. The implementation of restorative justice in the investigation system and methods in the field of Research, especially in the Pekalongan Police, has experienced several obstacles, including:⁸

1. The investigative authority granted by the Criminal Procedure Code is the authority to prove a crime and find a suspect who must be held accountable in court. The Criminal Procedure Code does not give investigators the authority to stop a case if the criminal elements are met as a result of the investigation.
2. In the Criminal Procedure Code, investigators are given the authority to stop investigations on the grounds that it is not a criminal act, insufficient evidence as a criminal act, and by law. However, the Criminal Procedure Code does not give investigators the authority to resolve cases outside of court hearings or to set aside cases for certain considerations.
3. The Criminal Procedure Code regulates the withdrawal of reports or complaints only for certain cases, namely those that are complaint offenses.

⁷Results of the interview with the Head of Criminal Investigation Unit of the Pekalongan Police, February 4, 2024

⁸Results of the interview with the Head of Criminal Investigation Unit of the Pekalongan Police, February 4, 2024

So that investigators, in a formal legal manner, except for complaint offenses, must forward to the Public Prosecutor for cases that are proven to be criminal acts based on investigations. Meanwhile, in the development of criminality, the parties prefer to resolve cases outside the courts, even in cases that are classified as pure crimes/not complaint crimes.

The obstacle for investigators in implementing law enforcement with restorative justice for justice and the benefit of society is that in the conventional criminal procedure process, if there has been peace between the perpetrator and the victim, and the victim has forgiven the perpetrator, then this will not be able to influence the authority of law enforcement not to continue the case to the criminal realm which will eventually lead to the criminal punishment of the perpetrator.

In the investigation of criminal acts at the police level, the existence of "out-of-court settlements" often raises suspicions about the authority of police investigators in resolving cases. The existence of an agreement between the victim/reporter and the perpetrator/reported party in the police investigation process is often considered an abuse of authority by the law enforcers. The good intentions of police investigators who handle cases with "out-of-court settlements", known in the police investigation process as SP3 (Investigation Termination Order) are often considered as a "commodity". Cynical sarcasm is often uttered, namely how much money is requested by the investigator, or how much money is given by the disputing or conflicting parties (reporter and reported party).

Controversy in the enforcement of criminal law based on the Criminal Procedure Code often occurs, while law enforcers are still struggling in the formalism paradigm, so that many cases that should have been tried simply evaporate due to limited thinking about the implementation of law enforcement. Whereas the main purpose of law enforcement is to realize truth and justice. As long as law enforcement officers do not change the belief that the main purpose of criminal law enforcement is to realize truth and justice, then the implementation of the Criminal Procedure Code will continue to be controversial.

Another obstacle faced in the application of restorative justice in the process of handling minor criminal cases is that investigators understand normative law or existing positive law better than understanding the concept of customary law as a law that lives in the midst of society. In the context of implementing restorative justice, investigators should also be open to understanding local customary law to provide a sense of justice to the community. The view of the community that still considers criminalization to be the best way to prosecute criminals, so that the application of restorative justice in society is still difficult to accept.⁹

⁹Results of the interview with the Head of Criminal Investigation Unit of the Pekalongan Police, February 4, 2024

3.3. The effectiveness of implementing Restorative Justice in resolving criminal cases outside the courts in the future

The condition of Indonesian society that is developing rapidly along with the development of the international world and the strong demands for justice and legal certainty, has caused several crime problems to no longer be resolved by the Criminal Code and Criminal Procedure Code. This condition has caused the criminal justice sub-system (Police, Prosecutor's Office and Supreme Court) to take policy steps in enforcing the law as discussed previously. The criminal justice sub-system (Police, Prosecutor's Office and Supreme Court) must continue to pay attention to various aspects of life in society, not only based on the principle of legality alone, but also considering the principle of legitimacy in the form of local and situational wisdom. In the ansich normative view, the existence of the policies of the criminal justice sub-system (Police, Prosecutor's Office and Supreme Court) can still be questioned as to their legitimacy. These policies are considered inconsistent with the regulations above them such as the Criminal Code and Criminal Procedure Code. Even Andi Hamzah as the Head of the Criminal Procedure Code Bill Team is of the opinion that in accordance with Article 1 of the Dutch Criminal Procedure Code (Sv), criminal procedures are carried out only in accordance with the methods regulated by law, so that criminal procedures may not be regulated by a regulation that is lower than the law in the formal sense.¹⁰

Criminal Law Policy in the Restorative Justice Approach Arrangement in the Future Since the founding of Indonesia, the founding fathers have established the 1945 Constitution, which states that the Republic of Indonesia is a country based on the fact that Indonesia is a country of law. This can be seen in the General Explanation of the law (rechtsstaat) and is not based on power (machtsstaat). Rechtsstaat in the General Explanation of the 1945 Constitution is not the concept of rechtsstaat as applied in the civil law system, but rather a term used to refer to the concept of a country of law in general. After the amendment, this affirmation is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This affirmation explains that the concept of a country of law in Indonesia is not the concept of a country of law rechtsstaat or the rule of law, but rather a combination of the two, namely a country of law that has Indonesian characteristics that make the values contained in Pancasila the basis of national and state life, which is called the Pancasila State of Law.

In responding to future crimes, the paradigm of crime and punishment must be changed. If someone commits a crime, it does not mean that they only think about punishment for the perpetrator, but also about recovery for the victim.

¹⁰Andi Hamzah, Academic Manuscript of Bill Number Year concerning Criminal Procedure Law, in the Criminal Procedure Code Bill Team, p. 2

Focusing on punishment for the perpetrator will only increase the desire for revenge, while the victim who is truly suffering is ignored. Instead, attention must be directed to the victim. The victim must be healed physically and mentally. The victim must receive compensation for their suffering. On the other hand, the perpetrator of the crime must be held accountable for their actions. First, the perpetrator must admit their actions and explain the reasons that drove them to commit the crime. Then the perpetrator must provide compensation to the victim and apologize for their actions. By being accountable for their actions, the perpetrator's dignity as a responsible human being is restored. All of these series are carried out in the context of deliberation in society, communities, or associations. Thus, a harmonious life will be established between the victim, the perpetrator and the community.

The law enforcement system in Indonesia must be in accordance with the values practiced by society, the values that are the guidelines for the life of the Indonesian nation in Pancasila, namely divinity, family, justice, harmony, unity, humanity (humanism), morality, order and relationships (mutual cooperation). As a country that adheres to the Continental European system, of course the values of Pancasila are stated in the form of laws including values in the rules of law enforcement.¹¹

Related to the reform of national criminal law, the concept of restorative justice is known. The concept of restorative justice is relatively new in the process of criminal execution and treatment of perpetrators of criminal acts. In the concept of restorative justice, it offers a form of resolution of various legal acts that occur outside the existing criminal justice process, so that it does not only rely on the ongoing legal process. But still obtain justice and resolve problems, especially for victims as the most disadvantaged party (suffering), as well as for the responsibility of the perpetrator. One of the solutions offered is the restorative justice settlement process.

In the development of theoretical discourse and the development of criminal law reform in various countries, there is a strong tendency to use penal ineducation as an alternative solution in the field of criminal law. It is undeniable that the practice of law enforcement in Indonesia in criminal cases is resolved outside the Court through the discretion of law enforcement officers, which then causes demands to make positive forms of case resolution outside the Court increasingly strong in Indonesia.

The draft of the Criminal Code Bill is a material legal reform which is an effort to realize the ideals of a state of law. So that the Criminal Code Bill can be said to be a manifestation of the personality of the Indonesian nation which not only adheres to the rule of law, but also prioritizes the protection of individual interests (individualistic), as well as the socialist legality model that prioritizes the

¹¹Munir Fuady, *Critical Legal School*, 2003, *Paradigm of Legal Powerlessness*, Bandung: Citra Aditya Bakti, pp. 58-59

interests of the state. Legal reform does not only focus on improving the law, but also revolutionizes the law for the better. The emergence of the Criminal Code Bill is an effort to create a nationalist law, besides that it can be interpreted as a manifestation of the true sovereignty of the nation. In essence, legal reform can determine the direction of the formation of the nation's character, so that the Criminal Code Bill is a tool for planned social and cultural transformation of society.¹²

The concept of restorative justice is actually a form of customary law as local wisdom that already exists and develops in Indonesian society. So it can be said that the Criminal Code Bill recognizes customary law (the living law) with the aim of fulfilling a sense of justice in society. The concept of restorative justice in handling criminal acts prioritizes moral, religious, social, economic aspects, and various other considerations. So that restorative justice can restore conditions that have been damaged.

The restorative justice approach is essentially an effort to resolve criminal cases that emphasizes restoration to conditions before the crime occurred. With the restoration of the victim's losses, it is hoped that it can rebuild harmony in life as before the crime occurred. Through this approach, the parties can resolve the case in a win-win solution. Therefore, this approach has been widely practiced in many countries, not only in their customary law communities, but also in the modern criminal justice system. As a comparative material, the following describes the practices in several countries related to the restorative justice approach in resolving criminal cases.

4. Conclusion

Implementation of Restorative Justice in resolving cases outside the court the implementation of restorative justice at the Pekalongan Police for handling cases that are not related to terrorism, state security, corruption and crimes against human life, the Pekalongan Police also tries as much as possible to divert the formal process of trial with a mediation process with the principle of restorative justice. The implementation of restorative justice by the Pekalongan Police is to realize justice because the members have been equipped with knowledge about the nature of how someone who becomes a victim in a criminal case so that the spirit to implement restorative justice is realized to restore the victim's rights first. In the Police, it is often implemented with a peace process between the reporter and the reported. The implementation of Restorative Justice at the Pekalongan Police has a weakness, the existence of an agreement between the victim/reporter and the perpetrator/reporter in the police investigation process is often considered as an abuse of authority by law enforcers. The good intentions of police investigators who handle cases with "out-of-court settlements", known in the police investigation process as SP3 (Investigation

¹²Septa Chandra, Legal Politics of Adopting Restorative Justice in Criminal Law Reform, *Fiat Justisia Journal of Legal Studies*, Vol.8 (No.2), 2014, pp. 271-278.

Termination Order) are often considered as "commodities". Cynical sarcasm is often uttered, namely how much money is requested by the investigator, or how much money is given by the disputing or conflicting parties (the reporter and the reported). The concept of restorative justice can be a permanent legal policy in building a national criminal law system in the future. Related to the context of criminal law reform in Indonesia, the RUUKUHP has accommodated the principle of restorative justice as a method of resolving problems outside the courts. The formulation related to the types of crimes (strafmaat) contains restorative properties, so it is very possible that the concept of restorative justice will be used as a reform of criminal law in Indonesia in the future.

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